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8 **United States District Court**
9 **Central District of California**
10 **Western Division**
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12 EDWARD M. WOLKOWITZ, solely in his
13 capacity as Chapter 7 Trustee of the
14 bankruptcy estate of Interworks Unlimited
Inc.

15 Plaintiff,

16 v.

17 DIGITAL GADGETS, LLC,
18 Defendant.
19

CV 17-04983 TJH (KSx)

Findings of Fact,

Conclusions of Law

and

Order

20 The Court has considered Defendant Digital Gadgets, LLC's ["Digital
21 Gadgets"] motion to dismiss for lack of subject matter jurisdiction, together with the
22 moving and opposing papers.

23 Because there were conflicting facts as to whether Interworks Unlimited Inc.
24 ["Interworks"] had standing to pursue this action, the Court ordered an evidentiary
25 hearing pursuant to *Rosales v. United States*, 842 F.2d 799, 803 (9th Cir. 1987).
26 Thereafter, Interworks filed bankruptcy and Edward M. Wolkovitz was appointed as
27 trustee of the bankruptcy estate of Interworks.
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On August 23, 2022, the Court conducted an evidentiary hearing on the issue of

1 whether Interworks had standing to maintain this lawsuit against Digital Gadgets.

2 The Court, having considered the various briefs submitted by the parties, and
3 having heard the evidence presented by the parties, now, issues the following Findings
4 of Fact and Conclusions of Law:

5 **FINDINGS OF FACT**

6 1. On August 14, 2012, Interworks and Bibby Financial Services, Inc.
7 entered into a factoring agreement, entitled “Master Purchase and Sale Agreement”
8 [“the Factoring Agreement”].

9 2. Pursuant to § 8.1 of the Factoring Agreement, it is governed by California
10 law.

11 3. Pursuant to § 1.1 of the Factoring Agreement, Interworks granted Bibby
12 the option to purchase Interworks’s existing and future accounts receivables.

13 4. Pursuant to Annex A of the Standard Provisions Definitions of the
14 Factoring Agreement, “‘Accounts Purchased’ shall mean all Accounts that are offered
15 for sale to [Bibby] regardless of whether an Advance is made against such Account.”

16 5. Pursuant to § 7.6 of the Factoring Agreement, “[Bibby], as the sole and
17 absolute owner of the Accounts, shall have the sole and exclusive power and authority
18 to collect each such Account, through legal action or otherwise[.]”

19 6. Between December 28, 2016, and January 4, 2017, Interworks issued
20 invoices to Digital Gadgets relating to Interworks’s sale of hoverboards to Digital
21 Gadgets [“the Invoices”].

22 7. Bibby did not purchase the Invoices. Consequently, Interworks did not
23 assign to Bibby the authority to collect the Invoices through legal action.

24 8. On January 12, 2017, Interworks and Cash Capital Group, LLC [“CCG”]
25 entered into an agreement entitled “Agreement for the Purchase and Sale of Future
26 Receipts” [“the CCG Agreement”].

27 9. The CCG Agreement did not set forth which state’s law would govern.
28 However, no party disputed that California law applied to the CCG Agreement.

1 10. The CCG Agreement provided that Interworks “sells, assigns and transfers
2 ... the Specified Percentage of the proceeds of each future sale made by Seller [‘Future
3 Receipts’] until the Seller has received the Purchased Amount.”

4 11. The CCG Agreement defined Specified Percentage as 18 percent.

5 12. Pursuant to § 3 of the CCG Agreement, the Specified Percentage became
6 100 percent if Interworks defaulted.

7 13. Pursuant to § 5 of the CCG Agreement, Interworks appointed CCG as its
8 agent and attorney-in-fact, with full authority to take any action to settle Interworks’s
9 obligations, including to collect the Future Receipts and to institute any proceeding
10 necessary to collect any of the remaining Purchased Amount.

11 14. Pursuant to § 16.7 of the CCG Agreement, Interworks granted CCG a
12 security interest in the Future Receipts, including the ability to enforce its rights as a
13 secured party under the Uniform Commercial Code if Interworks defaulted.

14 15. On July 7, 2017, Interworks filed this case.

15 16. As of the date this case was filed, the Invoices totaled \$929,280.00 and the
16 Purchased Amount totaled \$424,703.09, and CCG was entitled to enforce Digital
17 Gadgets’s payment obligations under the Invoices, if such an obligation existed, but
18 only up to the portion of the Purchased Amount to which it was entitled under the CCG
19 Agreement.

20 17. Upon Interworks’s assignment to CCG of the right to recover any amounts
21 due under any of the Invoices, CCG, not Interworks, became the real party in interest.

22 18. On June 10, 2017, CCG notified Digital Gadgets that Interworks “is in
23 default under the terms of the [CCG] Agreement and that Digital Gadgets is “directed
24 by The Rubin Law Firm c/o CCG (acting as [Interworks’s] attorney-in-fact) to hold in
25 trust all funds that would otherwise be paid to [Interworks].”

26 19. Regardless of Interworks’s default, CCG never had an interest in the entire
27 amount of all of the Invoices. Because CCG never had the right to recover the entire
28 amount due under all of the Invoices, some of the Invoices may not have been

1 recoverable by CCG.

2 20. In July, 2018, Interworks satisfied its financial obligations to CCG under
3 the CCG Agreement and, therefore, Interworks became, and is, currently, the real
4 party in interest, here.

5 21. Interworks had Article III standing when it filed this case, though it was
6 not the real party in interest.

7 22. Interworks, through its bankruptcy trustee, presently, has Article III
8 standing.

9 23. Any Finding of Fact erroneously categorized below as a Conclusion of
10 Law is hereby incorporated into these Findings of Fact.

11 **CONCLUSIONS OF LAW**

12 1. A suit brought by a plaintiff who lacks Article III standing is not a “case
13 or controversy,” and must be dismissed. *Cetacean Cmty v. Bush*, 386 F.3d 1169, 1174
14 (9th Cir. 2004).

15 2. To satisfy Article III standing, Interworks must have suffered a concrete,
16 particularized injury; there must be a causal connection between the injury and Digital
17 Gadgets’s conduct; and the injury must be likely to be redressed by a favorable
18 litigation outcome. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

19 3. A litigant invoking the jurisdiction of the Court must have standing not
20 only at the time of the commencement of the litigation but throughout all stages of
21 litigation. *See Davis v. Federal Election Com’n*, 554 U.S. 724, 733 (2008).

22 4. The failure to bring suit as the real party in interest is not a defect of
23 Article III standing, and can be cured by the substitution of the actual real party in
24 interest. *Dunmore v. United States*, 358 F.3d 1107, 1112 (9th Cir. 2004).

25 5. Pursuant to Fed. R. Civ. Proc. 17(a), suits in federal court must be
26 maintained by the real party in interest, *i.e.*, the party that possesses the legal right to
27 sue. *Dunmore*.

28 6. In a diversity case, the real party in interest is determined by state law.

1 *Allstate Ins. Co. v. Hughes*, 358 F.3d 1089, 1093-94 (9th Cir. 2004).

2 7. If the assignment of a security interest results in the assignment of the right
3 to enforce a debt, the assignee becomes the real party in interest in any suit to enforce
4 the debt, even if the assignee obtained only a partial interest. *See Greco v. Oregon*
5 *Mut. Fire Ins. Co.*, 191 Cal. App. 2d 674, 687 (1961).

6 8. Under California law, the rights of a secured party include the right to
7 enforce the obligation of the account debtor. Cal. Com. Code § 9607(a).

8 9. An assignment of the right to sue does not take away the assignor's Article
9 III standing. *Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, 991 F.3d 370, 380
10 (2d Cir. 2021) (citing *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269,
11 286-87 (2008)).

12 10. Any Conclusion of Law erroneously categorized above as a Finding of
13 Fact is hereby incorporated into these Conclusions of Law.

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15 Accordingly,

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17 **It is Ordered** that Digital Gadgets motion to dismiss for lack of subject matter
18 jurisdiction be, and hereby is, **Denied**.

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20 Date: December 19, 2022

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23 **Terry J. Hatter, Jr.**
24 **Senior United States District Judge**
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